

ECONOMIC INCENTIVE AGREEMENT BETWEEN MIGRATE PROPERTY 2, LLC AND THE CITY OF DURHAM FOR NEIGHBORHOOD REVITALIZATION

THIS AGREEMENT is made and entered into this the ____ day of _____, 2016 (“Contract Date”) by and between Migrate Property 2, LLC (the “Company”), a limited liability corporation organized and existing under the laws of the State of North Carolina, and the City of Durham (the “City”), a North Carolina municipal corporation.

BACKGROUND.

(a) Section 2(f) of the Resolution Establishing an Economic Development Financial Assistance and Incentive Policy for Job Creation, Job Retention and Capital Investment, adopted by the City Council on April 21, 2014 (the “Resolution”), specifies that the City Council may appropriate economic development investment funds for certain neighborhood revitalization fund projects. In order to be eligible for an incentive payment under the “Neighborhood Revitalization Fund Program,” the Capital Investments must be made within the Community Development Area (CDA) (but outside the downtown development tier), Targeted Portions of the CDA or Targeted portions of the Urban Growth Area. Eligible improvements must be completed within one year after the Contract Date.

(b) Section 2(f)(i) of the Resolution further specifies that the incentive may be equal to fifty percent (50%) of the total capital investment made for a total incentive payment not to exceed \$500,000.00, comprising qualifying capital investments as defined by the Resolution.

(c) By authorizing the execution of this Agreement, the City Council of the City of Durham finds that in order to aid and encourage the revitalization and redevelopment in the Targeted Portions of the CDA and the CDA (but outside the downtown development tier), eligible areas within the City of Durham as identified by the Resolution, it is necessary and desirable to provide for the renovation of the building and property located at 2201 Angier Avenue and that the proposed renovation will improve the economic conditions of the immediate area, increase taxable property in the City, and increase business prospects of the City.

(d) The quality of the proposed development meets the economic goals, the design control criteria as reflected in the Resolution, and the land-use goals of the City Council.

IT IS AGREED AS FOLLOWS:

1. Definitions.

(a) “Property” is the land and building(s) located at 2201 Angier Avenue more precisely as Durham County Parcel Identification Number 0831-19-62-7148.

(b) “Capital Investments” are defined and identified in the Resolution under Section 3(b).

2. (a) Prerequisites to Payments. If the Company, in its discretion, makes expenditures that meet the definition of Capital Investments within one year after the Contract Date, the City shall make payments to the Company as provided in Section 2(b) (*Schedule of Payments*).

However, before the City shall be obligated to make any payments pursuant to Section 2(b), the Company shall have:

(i) (*Minimum Expenditures*) made Capital Investments to the Property by to redevelop an 1200 (SF) building into 1600(SF) commercial building in NECD which is located along a City of Durham targeted commercial corridor; and by expending at least \$304,950.00 in Capital Investments, which investments shall include, but not be limited to, site work, selective demolition, concrete and masonry work, metal work, façade work, doors, glass & glazing, drywall, flooring, painting, furnishing, fire protection, plumbing HVAC, and electrical work.

(ii) (*Certificate of Compliance*), if required for the project(s), obtained from the Durham City-County Inspections Department a certificate of compliance (referred to below as “CO”) allowing occupancy or use, for office and/or commercial uses, of the area renovated to qualify under Section 2(a)(i) (*Minimum Expenditures*) above;

(iii) (*Accounting*) provided to the City a full and accurate accounting, with such detail as the City may reasonably require, of all expenditures comprising the Capital Investments; and

(iv) (*Certification*) delivered to the City a written certification, in such form as the City reasonably requires that the Company has satisfied all applicable requirements of Section 2 of this Agreement.

(b) *Schedule of Payment.* The City shall make payment of \$100,000.00 to the Company within 60 days after the Company has demonstrated compliance with all of the conditions in Section 2(a) (*Prerequisites to Payments*) as qualified by the effective Option.

(c) *Durham Based Business Plan Conditions.* In addition to meeting the requirements described above under Sections 2(a), Company shall further comply with the following conditions in order to be eligible for the incentive payment:

Contractor shall complete and return the document entitled “Durham Based Business Plan” (attached hereto as Attachment A which consists of 5 pages) upon execution of this Agreement and comply with its provisions during the term of this Agreement.

3. *Delay of Payment.* If the City has reason to believe that any statement or certification made by the Company pursuant to this Agreement, including but not limited to Section 2 is not accurate, a payment otherwise appearing to be due shall be delayed for a reasonable time for a determination of the facts, provided that the City shall send notice to the Company of the grounds for that belief.

4. *Time of Essence for All Dates and Deadlines; 18-Month Expiration.* Time is of the essence for all dates and deadlines in this Agreement. Notwithstanding any other provision contained in this Agreement, the City shall have no obligation to, and shall not make any

payment to the Company pursuant to this Agreement on a date more than 18 months after the Contract Date.

5. Addresses. The payments by the City pursuant to this Agreement shall be mailed to:

_____ (add address)

or to such other address as the Company may specify by written notice to the City. When a notice is required or permitted by this Agreement, it shall be effected by written notice to the City by delivery to:

Director
Office of Economic & Workforce Development
City of Durham
101 City Hall Plaza, Durham NC 27701

and to the Company by delivery to:

Cameo Voorhies
Migrate Properties 2, LLC
220 East Knox Street
Durham NC 27701

_____ (add address)

Either party may change the address by giving notice of the change to the other party. Notice is deemed received (i) when it is handed to an employee of the other party located at the address stated in this section, or (ii) in case of mailing, on the third business day after it is deposited in a post-paid envelope in a post office or official depository under the exclusive care and custody of the United States Postal Service.

6. *City Policy* THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX, AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CITY CONTRACTS.

7. Assignment. Without the City's written consent, the Grantee shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out of this contract. The City Manager may consent to an assignment without action by the City Council. Unless the City otherwise agrees in writing, the Contractor and all assignees shall be subject to all of the City's defenses and shall be liable for all of the Grantee duties that arise out of this contract and all of the City's claims that arise out of this contract..

8. Modifications by Written Agreement; No Other Current Agreements; Waivers; Performance of Government Functions; References to Sections. This Agreement may be

modified only by a written agreement executed by both parties hereto. Further, a modification is not enforceable against the City unless it is signed by the City Manager, a deputy or assistant City Manager, or, in limited circumstances, a City department director. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this contract. No action or failure to act by the City shall constitute a waiver of any of its rights or remedies that arise out of this Agreement, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing. Nothing contained in this Agreement shall be deemed or construed so as to in any way estop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions. This Agreement is intended for the benefit of the City and the other party executing this Agreement and not any other person. Unless the context requires otherwise, references in this Agreement to Sections are references to Sections contained in this Agreement. Section titles, including references to Sections with their titles (as in "Section X(a)(i)(*title of X(a)(i)*)", is for convenience only, and the titles are not intended to affect the meaning of this Agreement.

9. *Default. Termination.* If the Company fails to fulfill any of its obligations under this Agreement, and fails to correct such failure within 30 days of receiving notice of such failure from the City, or if the Company makes any materially false statement in any statement or certification referred to in this Agreement, the City may hold the Company in default and (a) terminate this Agreement and make no further payments to Company and (b) recover all prior payments and reasonable direct expenses incurred by the City in connection with this Agreement, including reasonable attorney's fees.

10. *Forum and Choice of Law.* This Agreement shall be deemed made in Durham County, North Carolina. This Agreement shall be governed by and construed in accordance with the laws of North Carolina. The exclusive forum and venue for all actions arising out of this Agreement shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This section shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this section.

11. *Indemnification.*

(a) To the maximum extent allowed by law, the Contractor shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this contract as a result of acts or omissions of the Contractor or subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection "a," the Contractor shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City. (b) Definitions. As used in subsections "a" above and "c" below -- "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within "Charges" are interest and reasonable attorneys' fees assessed as part of any such item. "Indemnitees" means City and its officers, officials, independent contractors, agents, and employees, excluding the Contractor. (c) Other Provisions Separate. Nothing in this section shall affect any warranties in favor of the City that are otherwise provided in or arise out of this contract. This section is in addition to and

shall be construed separately from any other indemnification provisions that may be in this contract. (d) *Survival*. This section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract. (e) *Limitations of the Contractor's Obligation*. If this section is in, or is in connection with, a contract relative to the design, planning, construction, alteration, repair or maintenance of a building, structure, highway, road, appurtenance or appliance, including moving, demolition and excavating connected therewith, then subsection "a" above shall not require the Contractor to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

12. *Agreement Subject to Resolution*. This Agreement is made pursuant to the Resolution, and it is subject to the procedures, limitations, and restrictions set forth in the Resolution.

13. *State Law Provisions*

(a) *E-Verify Requirements*. (A) If this contract is awarded pursuant to North Carolina General Statutes (NCGS) 143-129 (i) the contractor represents and covenants that the contractor and its subcontractors comply with the requirements of Article 2 of Chapter 64 of the NCGS; (ii) the words "contractor," "contractor's subcontractors," and "comply" as used in this subsection (a) shall have the meanings intended by NCGS 143-129(j); and (iii) the City is relying on this subsection (a) in entering into this contract. (B) If this contract is subject to NCGS 143-133.3, the contractor and its subcontractors shall comply with the requirements of Article 2 of Chapter 64 of the NCGS.

(b) *Iran Divestment Act Certification*. The Contractor certifies that, if it submitted a successful bid for this contract, then as of the date it submitted the bid, the Contractor was not identified on the Iran List. If it did not submit a bid for this contract, the Contractor certifies that as of the date that this contract is entered into, the Contractor is not identified on the Iran List. It is a material breach of contract for the Contractor to be identified on the Iran List during the term of this contract or to utilize on this contract any subcontractor that is identified on the Iran List. In this Iran Divestment Act Certification section -- "Contractor" means the person entering into this contract with the City of Durham; and "Iran List" means the Final Divestment List – Iran, the Parent and Subsidiary Guidance– Iran list, and all other lists issued from time to time by the N.C. State Treasurer to comply with G. S. 147-86.58 of the N.C. Iran Divestment Act.

14. *Assurance by Company of Appropriate Treatment of Contractors and Lower Tier Subcontractors*. In order to remain eligible for the city payment, upon written request by the City, Company shall provide documentation showing either that all entities with whom it has a contract to construct all or any portion of the improvements on the Property have been paid in full and on time, or that a bona fide dispute over the satisfactory completion the work to be performed exists and is in the process of being resolved in accordance with applicable law. Further, Company shall include a requirement in any agreement it enters into with any entity to construct all or any portion of the improvements on the Property requiring such entity to include a provision in any subcontract it enters into which permits the City to require that contractor and its subcontractor to provide documentation showing either that all entities who have been contracted to construct all or any portion of the improvements on the Property have been paid in

full and on time, or that a bona fide dispute over the satisfactory completion the work to be performed exists and is in the process of being resolved in accordance with applicable law. The documentation the City may request shall include certified payment applications, a certificate or affidavit of payment by the Company, owner(s), prime contractors or subcontractors, invoices, cancelled checks, schedule of values or such other information as may be reasonably requested by the City. Evidence of bona fide disputes over the satisfactory completion of any work pursuant to any contract or subcontract shall include, but not be limited to, unsatisfied property or payment liens, pending lawsuits or unresolved contract claims made in writing. If the City, through its City Manager, determines that the Company has failed to pay any entity with which it has a direct contract to construct all or any portion of the improvements on the Property have not been paid in full and on time, and that a bona fide dispute over the satisfactory completion the work to be performed which is in the process of being resolved in accordance with applicable law does not exist, the City shall give the Company thirty (30) days written notice of its intent to suspend City Payments. If the Company has not provided sufficient documentation at the end of this thirty (30) day period either that the payment(s) in question have been made, or that a bona fide dispute over the satisfactory completion the work to be performed exists and is in the process of being resolved in accordance with applicable law, the City may suspend the city payment. The city payment shall be resumed upon the submission by the Company to the City of sufficient documentation showing either that the payments in question have been made, or that a bona fide dispute over the satisfactory completion the work to be performed exists and is in the process of being resolved in accordance with applicable law. The City shall have no power to suspend the city payment due to failures of contractors and subcontractors with whom the Company does not have a direct contractual relationship to comply with the terms of contracts to which the Company is not a party.

15. City's Manager's Authority. To the extent, if any, the City has the power to suspend or terminate this contract or the Contractor's services under this contract, that power may be exercised by the City Manager or a deputy or assistant City Manager without City Council action.

IN WITNESS WHEREOF, the City and the Contractor have caused this contract to be executed under seal themselves or by their respective duly authorized agents or officers.

CITY OF DURHAM

ATTEST:

By: _____

Economic Incentive Agreement between Migrate Partner 2, LLC and the City of Durham for Neighborhood Revitalization

Preaudit Certification:

COMPANY

Migrate Property 2, LLC
a North Carolina limited liability company

(Affix corporate seal)

By _____

Acknowledgement by Migrate Property 2, LLC:

STATE OF _____

COUNTY OF _____

I, a notary public in and for the aforesaid county and state, certify that

personally appeared before me this day and stated that he/she is
_____ of Migrate Property 2, LLC a North Carolina limited
liability company, and that by authority duly given and as the act of the company, he signed the
foregoing Amendment with the City of Durham and the corporate seal was affixed thereto.

This the _____ day of _____, 2016.

My commission expires:

Notary Public

(NOTARIAL SEAL)

ATTACHMENT A

Migrate Property 2, LLC Project in NECD

Durham-Based Business Plan

Pursuant to that certain Contract between the City of Durham, a North Carolina municipal corporation (the "City") an a nonprofit corporation organized and existing under the laws of the State of North Carolina, and the City of Durham (the "City"), a North Carolina municipal corporation and registered to do business in the State of North Carolina, regarding funds for capital investments at 2201 Angier Avenue, identified more precisely as Durham County Parcel Identification Number 0831-19-62-7148 , effective as of _____ 2016 (the "Contract"), Company has agreed to make certain capital investments in the City (the "Project").

Purpose/Goals

The purpose of this Durham-Based Business Plan (the "Plan") is to encourage the use of Durham-based firms in an OEWD database in connection with the Project. Through this process, Durham-based firm that may not have otherwise received consideration due to lack of exposure to the larger business community may have the opportunity to become involved in this Project in their community.

Administration

This Plan shall be administered by Company and the City and shall take effect when signed by the parties below and shall be fully effective until Completion Date (as defined in the Contract), including any extension or modification to such date. The Plan will implement the following guidelines and activities:

A. *Durham-Based Firm Identification Resources.* Company agrees to undertake the following:

- 1. Prior to the execution of the Contract, meet with the Director of the Office of Economic and Workforce Development or appropriate staff to establish project goals.**

Migrate Property 2, LLC and the City through the Director of the Office of Economic and Workforce Development or such other authorized employee of the City will meet and mutually set specific goal(s) under the Plan for the Project (the "Goals"). The Goals for this Project shall be those Goals set forth in Section C of this Plan.

- 2. Use the City's database.**

Migrate Property 2, LLC will review the list of Durham-based firms that are supplied by the City for those qualified and available to work on the Project.

- 3. Use of local organizations.**

In the event a review of the City's database does not identify any Durham-based eligible to work on the Project, Company agrees to request from one or more of the offices listed below, as Company determines, the identity of any qualified Durham-based firms for work on the Project:

- Durham Business & Professional Chain
- NC Institute of Minority Economic Development, Inc. contractors and vendor listing
- RDU International Airport Authority Minority Database
- Small Business Administration (SBA) Minority Database
- North Carolina Department of Transportation (NCDOT) Database

B. Outreach. Company will solicit interest by Durham-based firms in the Project utilizing the following:

1. Provision of written notice to qualified Durham-based firms with the list supplied in the City database that could perform the work to be subcontracted.

Company will send invitations to bid to qualified Durham-based firms, as determined by Company, in the City database expressing the desire to receive a proposal from such Durham-based firms for scope of work in their respective areas of expertise.

Company will provide to the City a complete listing of all qualified firms that received invitations to bid on the Project. Company will maintain documentation on any written requests made to Durham-based firms with regard to solicitation of work on the Project.

2. Timelines of notice to permit sufficient time for response of Durham-based firms.

In the event Company is able to provide the City with notice of upcoming projects, Company agrees to permit the City to notify Durham-based firms of those upcoming projects. These notifications may include a brief description of the project, potential subcontracting opportunities and anticipated solicitation dates. Some of the specific efforts the City may employ for notifying Durham-based firms include, but are not limited to, direct notification through phone calls or written notification through fax or email, and advertisements in local and statewide minority newspapers.

3. Pre-bid Meetings with Durham-based firms.

As commercially reasonable, Company will host pre-bid meetings in which qualified Durham-based firms will be invited to attend. When commercially reasonable and practicable, Company will provide two to three weeks after the prebid meetings and corresponding invitations to bid for the Durham-based firms to provide their proposals.

C. Procurement & Recruitment

With the understanding that firms must meet qualification requirements and that Company, its contractors and sub-contractors will have the intent and make good faith efforts toward ensuring equal contracting opportunities for Durham-based firms and the following contracting goal will be established for the Project:

- An aggregate of \$100,000.00 of capital expenditures will be completed or performed by enterprises

The aforementioned goal will be established for work including, but not limited to the following construction and hospitality trades:

- Asphalt work
- Site utilities
- Flooring painting
- Case work
- Saw cutting
- Landscaping
- Concrete
- Doors & framing
- Hardware
- Miscellaneous metals and steel erection
- Hotel maintenance

Company will employ the following efforts in order to recruit businesses:

- 1. Distribute lists of qualified Durham-based firms, as determined by Company, to prime bidders at the pre-bid meeting.**

Company will document any correspondence and information related to qualified Durham-based firms that has been provided to prime bidders. Company will maintain a visitor sign in log at the local office of the Construction Manager for all prime bidders and Durham-based firms who attend meetings related to the Project.

D. Technical Assistance

Company will provide technical assistance to Durham-based firms to aid them in the preparation of prequalification statements and proposals by:

- 1. Provide construction schedules with the bid packages to allow Durham-based firms to better understand their general conditions.**
- 2. Offer referral assistance to Durham-based firms by providing them with a list, when available of vendors, service providers and/or prime contractors.**
- 3. Provide assistance with prequalification forms.**

Company will provide commercially reasonable assistance to Durham-based firms with prequalification forms.

E. Other Purchases

Company will involve Durham-based firms in the Project through:

- 1. Allowing qualified Durham-based firms to bid on the professional services, vendor and supplier and non-professional services aspects of the Project to the extent that such qualified Durham-based firms are able, in addition to the construction aspects of the Project.**

F. Monitoring and Reporting

Company will document the Plan's actual accomplishments by:

1. Analyzing and auditing majority trade contractors' bidding records to assure a minimum good faith effort. To the extent requested in writing by the City, Company will provide a letter certifying as to compliance of these actions within 10 business days of receipt of such written request.
2. Providing quarterly reporting. Reports shall be submitted by the 15th day of the month following the close of each quarter (January, April, July and October) and shall include a list of any Durham-based firms participating in the Project during the prior quarter, the category of each Durham-based firm, a description of the work completed by such Durham-based firm during the prior quarter and the amount paid to each Durham-based firm in the prior quarter.
3. Preparing and presenting a final report on the recruitment of Durham-based firms to work on the project.

Following the completion of the Project, Company will compile all quarterly reports previously provided to the City into one comprehensive Project Report and will deliver this to the City within 120 days following the completion of the Project.

